

No. 3539

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IN THE  
UNITED STATES  
CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT

KATHRYN STRUETT, formerly  
Kathrine Smith,

*Appellant,*

vs.

HARRY B. HILL,

*Appellee.*

No. 3539

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**Brief on Behalf of Appellee**

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JOHN W. ROBERTS,

E. L. SKEEL,

HARRISON B. ALLEN,

*Attorneys for Harry B. Hill,  
Appellee.*

1301 Alaska Bldg., Seattle.

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WM. P. LORD, of Portland, Oregon,  
*Solicitor for Appellant.*

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| KATHRYN STRUETT, formerly<br>Kathrine Smith, | } <i>Appellant,</i> | } No. 3539 |
| vs.  |                     |            |
| HARRY B. HILL,                               | } <i>Appellee.</i>  |            |

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**Brief on Behalf of Appellee**

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The decision of the Honorable Trial Court, Transcript, pages 159 to 163, states all the argument necessary on behalf of appellee. We will cite briefly where, in the Transcript, this Court may find support for the conclusions of the Trial Court.

Appellant was forty years of age at the time of trial. (Tr. 45.)

When the relationship between appellant and appellee began, both were married. (Tr. 47, 48, 64, 65,

66.) The intimate relationship began in 1912, and her husband did not die until 1914. (Tr. 66.)

Each time he visited her, he paid her \$5, \$10 or \$20. (Tr. 53, 54, 119.) But none of this money was included in the amount claimed.

That Hill paid the mortgage on her land is not disputed. That he paid the taxes is in no way disputed.

The name of appellant at the time was Smith.

The consideration named in the deed was \$1000. (Tr. 163.)

On her giving him the deed, he gave back to her an instrument by which he agreed to re-transfer the property to her on payment of amount of consideration set forth in the deed. (Tr. 174.) She prepared the deed herself, went to a Notary Public, and had it acknowledged, and delivered it to Hill, and received back from him the document providing for reconveyance, on payment of \$1000. Hill made no suggestion to her about where she should go to have the deed prepared or acknowledged, and he was not present. (Tr. 111, 114, 115, 125.) Hill paid the mortgage October 20th, 1912, and deed is dated August 10th, 1916. He paid all taxes after that, except the taxes of 1918. (Tr. 89, 99.)

Mrs. Smith was re-married before the trial, and her name at the trial was Struett. She was asked and answered as follows:

“Q. Now you had this letter (meaning the agreement to re-convey) in your possession all

that time, from July 28th, 1918, until you started this suit, and yet you never at any time questioned the fact that you owed him this money, did you?

A. Why no."

She wrote Hill at Altoona, asking him how much she owed him at that time. On July 28th, 1918, he answered saying that it was more than a thousand dollars, but that if she would pay \$1000, he would settle the whole thing. (Tr. 178, 179.) She went over to see him about it, and agreed to pay him the \$1000: \$500 cash and \$500 within a day or two thereafter. (Tr. 79.)

It will be noted that up to that time she raised no question whatever about her honestly owing him more than \$1000. She both wrote him, and went to see him, admitting the indebtedness. Later, she went to her attorney. She swore that she told her attorney the facts, and told them truthfully. (Tr. 90, 91.) After the attorney obtained the facts from her, examined the written instrument held by her, admitting the indebtedness, etc., the attorney wrote a letter to Hill, in which he stated that Mrs. Struett had conferred with him in relation to having the deed declared a mortgage, "*subject to your lien for the consideration set forth in the conveyance, together with taxes and assessments.*" (Tr. 179, 180.) As proof that the attorney had before him the documents, he states in this letter:

"Under your letter of July 28th, you say that you will re-convey this property upon the

payment of \$1000, but as I construe the facts as they have been submitted to me, the only money that Mrs. Struett is required to pay is the amount expressed in your Declaration of Trust, under date of December 22nd, 1916."

Note that her attorney, after she had truthfully given him the facts, and examined all the documents, admits that Mr. Hill is entitled to the \$1,000, with all taxes and assessments, all of which it is admitted Mr. Hill had paid.

We have waited until the last date possible to receive brief from appellant, but have received none, and therefore can make no reply.

We respectfully pray an affirmance of the judgment.

Respectfully submitted,

ROBERTS & SKEEL,  
HARRISON B. ALLEN,  
*Attorneys for Appellee.*